

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR.

JUDGMENT

NARAYAN Vs. STATE OF RAJASTHAN.

D.B. Criminal (Jail) Appeal No.1057/2003 against the judgment and order dated 16.09.2003 passed by the Additional District & Sessions Judge (Fast Track), Udaipur in Sessions Case No. 65/2003.

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Date of Judgment: 31 August, 2010

PRESENT

HON'BLE MR. JUSTICE PRAKASH TATIA
HON'BLE MR. JUSTICE KAILASH CHANDRA JOSHI.

Mr.Shaitan Singh, for the appellant.
Mr.K.R. Bishnoi , Public Prosecutor for the State.

BY THE COURT: (Per Hon'ble Joshi, J.)

Accused appellant Narayan s/o Kaliya Meena, has preferred this D.B. Criminal Jail appeal, against the judgment of conviction and the order of sentence dated 16.09.2003, passed by the learned Additional District & Sessions Judge (Fast Track), Udaipur in Sessions Case No. 65/2003, whereby the accused appellant Narayan has been convicted for the commission of offence under section 302 IPC and sentenced to imprisonment for life and a fine of Rs.1,000/- and in default of payment, to further undergo six months' rigorous imprisonment.

The brief facts of the case giving rise to this jail appeal are that on 11.02.2003, one Devi Lal Meena gave telephonic information at Police Station Parsola , District Udaipur to the effect that Narayan, s/o Kaliya Meena, r/o Bara Charpotiya has murdered his wife Kanta with an axe. On receiving this report, SHO, Sugan Chand along with Head Constable Ramesh Chandra, and Constables Rajmal, Ishwarlal and Ganpat Singh proceeded for the place of occurrence, where PW/1 Chokha s/o Jeeva Meena , gave oral information to the effect that at about 01.30PM while he was at his house, his sister-in-law (*Bhabhi*) Jeevli, informed him that Narayan is assaulting his wife Kanta with an axe and on receiving this information, he went to the place of occurrence and saw Kanta in an injured condition, and saw Narayan running away from the place of occurrence and Kanta, who had received grave injuries, succumbed to the injuries.

On this report, FIR No.19/2003 under Section 302 IPC was registered and the investigation commenced. After usual investigation, a charge sheet under section 302 of the Indian Penal Code was submitted in the court of Addl. Chief Judicial Magistrate, Dhariyawad, District Udaipur from where the case was committed to the court of Sessions Judge, Udaipur and thereafter the case was transferred to the court of learned Additional District & Sessions Judge (Fast Track), Udaipur for trial.

The learned trial Court, framed charges against the

accused appellant Narayan under section 302 IPC , to which he denied the charges and claimed to be tried.

The prosecution, in support of its case, examined 17 witnesses, namely, PW/1 Chokha, PW/2 Dewa, PW/3 Keshia, PW/4 Lalu Ram, PW/5 Devi Lal, PW/6 Deva, PW/7 Shanti Lal, PW/8 Surya, PW/9 Jeevli, PW/10 Tej Singh, PW/11 Pratap Singh, PW/12 Ashok Kumar, PW/13 Dr.Jai Kumar, PW/14 Mohd.Rafique, PW/15 Sawai Singh, PW/16 Shankar Singh, and PW/17 Sujan Chand.

The statement of the accused appellant was recorded under section 313 Cr.P.C., by putting the incriminating evidence adduced by prosecution during trial. In defence, neither any oral nor documentary evidence was adduced by the accused appellant.

After hearing the learned counsel for the accused and the learned Public Prosecutor and appreciating the evidence on record, the learned trial Court, vide impugned judgment and order dated 16.09.2003 convicted and sentenced the accused appellant as stated above. Hence this criminal jail appeal by the present accused appellant.

First of all we have to appreciate , whether the death of the deceased Kanta was, homicidal, accidental or suicidal one and for this purpose , the statement of PW/13 Dr. Jai Kumar Meena were relevant. PW/13 Dr.Jai Kumar Meena

deposed that on 11.02.03 he conducted the autopsy on the body of Kanta wife of Narayan , b/c Meena and following external injuries were observed on her body:-

1. Incised wound of Rt.parietal region skull, 5x2x deep into bone by sharp object.

2. Incised wound 5 1/2 x 3x deep into bone by sharp object. Fresh clotted blood present on skull hairs around the neck , shoulder upper part of body, flow out on ground upto 6 meters.

Further he deposed that he had prepared the post-mortem report Ex.P/11. As per opinion of PW/13 Dr. Jai Kumar Meena, the cause of death of the deceased was shock and due to haemorrhage and all the injuries were anti-mortem in nature. In view of the statement of PW/13 Dr.Jai Kumar Meena, it is well established that the death of the deceased Kanta, was homicidal in nature.

To prove the alleged offence, the prosecution adduced 17 witnesses and the prosecution solely hinges on this evidence that just after the occurrence, the accused appellant Narayan ran away with '*Kulhari*' and at that relevant time he was seen by PW/Chokha, PW/2 Dewa and PW/9 Jeevli. All the three witnesses deposed that on 11.02.03 they saw the accused appellant Narayan, running away from the place of occurrence after throwing the axe and the dead body of Kanta was lying in

the *parshala* of her house.

PW/1 Chokha also deposed that he filed the first information report Ex.P/1 in the Police Station and the police prepared the last *panchnama* Ex.P/2 and site inspection memo Ex.P/3 was also prepared before him. The execution of *furd supurdginama* of dead body, was also admitted by this witness.

PW/2 Dewa deposed that four months previous to the recording of his statement in the court, at 01.00 PM on the cries of his sons, he immediately rushed towards the house of Narayan and he saw Narayan running away from his house. The wife of Narayan , Kanta, was lying dead in her house. He , along with Surya, Shanti Lal and Devi Lal, ran chasing the accused appellant and ultimately Narayan was caught in the garden of Lemons. They brought Narayan to his house and handed him over to the police. He was also the witness of *furd panchanama*, Ex.P/2.

Along with Surya, Shanti Lal, and Deva , PW/5 Devi Lal also corroborated the evidence of PW/2 Dewa and deposed that the son of Shanti Lal, Surya came to his house and informed him that accused appellant Narayan was running, after causing the death of his wife. He informed the police on telephone. He saw the dead body of the deceased Kanta and blood was oozing from her dead body.

PW/7 Shanti Lal deposed that on 11.02.03 at about

01.00 to 01.30PM he was at his field. His son Surya came there . His father also loudly called him. Then he, along with Devi Lal, Surya and Dewa rushed to chase Narayan and they caught Narayan from the garden of Lemons. He also saw the body of the deceased Kanta , having injuries on neck and temple region.

PW/8 Surya also corroborated the statement of PW/2 Dewa, PW/6 Deva, and PW/7 Shanti Lal .

PW/9 Jeevli deposed that three months previous to recording of her statement in the court, she was standing outside her house and Narayan was running away from his house, after killing his wife Kanta. Although this witness had been declared hostile by the prosecution, but to this extent she corroborated the statement of other witnesses.

The learned trial court, while relying upon the evidence of the above witnesses, who reached just after the occurrence and saw the accused appellant running with a blood stained '*Kulhari*', convicted the accused appellant for the commission of offence under section 302 IPC and the learned trial court found proved these facts that ;

(i) At the time of incident accused was present at his residence along with his wife;

(ii) Just after the incident, accused ran away

from the place of incident after throwing the blood stained '*Kulhari*' and was chased by other persons who caught him in the garden of lemons.

(iii) Same group of human blood was found on the sari of the deceased and '*kulhari*' and shirt of the accused.

The learned trial Judge held that all the above circumstances produced against him, were not explained by accused and accused took a simple stand of stating prosecution evidence as false, in his statement under section 313 Cr.P.C.

The learned trial court , while relying upon the judgment of the Hon'ble Supreme Court in Ganesh Lal vs. State of Rajasthan [2002 Cr.L.R. SC 37] held the accused appellant guilty for commission of offence under section 302 IPC.

The learned counsel for the accused appellant vehemently contented that the conviction of the learned trial court could not be maintained as it was based on mere conjunctions and surmises and learned trial court had committed an error in appreciation of evidence, while relying upon the statement of witnesses. The learned counsel for accused appellant relied upon the following authorities:

(1) Uttam Kumar Devnath vs. State of U.P. [2003

(2) Crimes 97]

(2) Bhupan vs. State of M.P. [(2002) 2 SCC 556]

Per contra, learned Public Prosecutor, vehemently defended the judgment and argued that the judgment of the learned trial court is based on detailed appreciation of evidence and does not require any interference.

We have considered the rival contentions of learned counsel for both the parties and considered the evidence produced by the prosecution , during the course of trial.

It is well proved by the evidence of PW/1 Chokha and PW/2 Dewa that they saw the accused appellant running with '*kulhari*' and at the same time, they reached the place of occurrence and they saw the dead body of Kanta , the wife of the accused appellant. They both saw the injuries on the neck and the temporal region of deceased. This fact was further corroborated by the evidence of PW/9 Jeevli, who though declared hostile, but corroborated this part of evidence and her this statement was also put to accused for explanation under section 313 Cr.P.C.

We have perused the statement of the witnesses. The statement of PW/1 Chokha and PW/2 Dewa could not be shattered, even in cross-examination . Their presence at the scene of occurrence was natural, because they were the residents of same place, near the scene of occurrence.

Evidence produced by prosecution, of the three witnesses, namely, PW/1 Chokha, PW/2 Dewa and PW/9 Jeevli was admissible in evidence, as "res gestia" under section 6 of the Indian Evidence Act and it was a good piece of evidence, which even remained unshattered in cross-examination.

We have also perused the authorities cited by the learned counsel for accused appellant and the facts of the above citations were distinct from that of the present case.

In view of the aforementioned discussions, the offence against the accused appellant Narayan was proved, beyond reasonable doubt, for the commission of offence under section 302 IPC.

Resultantly, the judgment of the learned trial court does not require any interference at this stage. The appeal filed by the accused appellant Narayan is dismissed and the judgment of conviction and the order of sentence dated 16.09.2003, passed by the learned Additional District & Sessions Judge (Fast Track), Udaipur in Sessions Case No. 65/2003, is maintained.

(KAILASH CHANDRA JOSHI), J.

(PRAKASH TATIA), J.